

## PURCHASE ORDER TERMS AND CONDITIONS (Rev. 110112)

These Purchase Order Terms and Conditions form the general agreement ("Agreement") between the parties hereto. Seller shall provide to Peak-Ryzex such products and/or services purchased by Peak-Ryzex identified in the purchase order ("Order"). Therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. BLANKET ORDER.** If the Order has multiple shipment dates ("Blanket Order"), Peak-Ryzex may cancel the Blanket Order at any time as to all or any part of the products ordered and not yet shipped to Peak-Ryzex by giving written notice to Seller consistent with the provisions in Section 13 (Termination). At the time of Order acknowledgment, Seller will identify in writing any non-standard materials required to complete the Blanket Order along with its procurement lead times. Peak-Ryzex will not be liable for standard products not yet shipped to Peak-Ryzex; Peak-Ryzex's liability is limited to actual costs incurred plus cost for coverage for non-standard materials procured by Seller in accordance with the procurement lead time.
- 2. PURCHASE PRICE.** The price set forth on the face of Order includes all taxes, unpaid duties and other charges and shall in no event be increased without Peak-Ryzex's written consent, given by a duly authorized representative of Peak-Ryzex. If the price on the face of the Order is incorrect, Seller must immediately notify Peak-Ryzex in writing before processing the Order. If Seller processes any part of the Order or delivers any of the products and/or services ordered hereunder, Seller waives any right to claim a price different from the price set forth on the face of the Order. Seller represents and warrants that the prices charged in the Order and the terms hereof are no less favorable than the prices charged and terms thereof provided by Seller to other customers in transactions involving similar items in comparable quantities and delivery schedules. If, prior to the termination of the Order, Seller makes a general reduction in price, at stated quantities, of any products or services being purchased under the Order, an equivalent price reduction shall apply to the Order for similar quantities placed under the Order and unshipped or unperformed at the time of such general price reduction. Such reduced prices shall apply for the duration of the Order or until such prices are further reduced. Peak-Ryzex shall pay Seller within sixty (60) days of Peak-Ryzex's receipt of Seller's invoice.
- 3. SHIPMENT.** Seller shall use the carrier specified by Peak-Ryzex. All products ordered hereunder shall be suitably packed and marked so as to secure the lowest transportation cost and to comply with the requirements of the carrier to be used. The products shall be accompanied by all necessary schematics, charts, diagrams, plans, wiring diagrams, block diagrams, and any and all other papers, booklets or other material to ensure proper set up and operation of such products ("Instructions"), as appropriate. Any failure by Seller to include Instructions shall be deemed to be a defect in the products and Peak-Ryzex shall be entitled to reject the products in accordance with Section 4, below. Seller shall not charge for packing, boxing, marking, freight, cartage or storage. Peak-Ryzex reserves the right to partially accept a shipment and reduce payment to Seller by the amounts equal to any damaged or rejected products. Peak-Ryzex's records will be accepted as final and conclusive with respect to all shipments which are not accompanied by invoices or shipping documents indicating purchase order number, Peak-Ryzex's part number and quantities specified on the face of the Order. Peak-Ryzex, in its sole discretion, may reject any overshipment.
- 4. INSPECTION AND ACCEPTANCE.** Peak-Ryzex shall be under no duty to inspect products prior to any processing or altering thereof. Peak-Ryzex's examination, processing, altering or otherwise dealing in products shall not be deemed an acceptance of the products which would in any matter limit or modify any rights of Peak-Ryzex hereunder. In the event Peak-Ryzex rejects any products delivered by Seller pursuant to the Order, Peak-Ryzex will notify Seller in writing within a reasonable time as to the products rejected and will request instructions from Seller with respect to the disposition of such rejected products. Pending receipt of Seller's instruction, Peak-Ryzex shall hold any rejected products at Seller's risk and expense. If Seller fails to furnish Peak-Ryzex with instruction as to the disposition of such rejected products within a reasonable time, Peak-Ryzex may return the rejected products to Seller at Seller's expense. Seller shall pay all transportation charges on returned items. Peak-Ryzex may, at its option, inspect and sort the products; Seller shall pay the cost thereof including associated damages resulting from delivery and use of rejected material. Peak-Ryzex shall provide Seller with notification of any complaint, claim, notice of any defect or notice of breach within thirty (30) days of Peak-Ryzex's awareness of such defect or breach. If the products purchased under the Order are industry standard or "off the shelf" products, Peak-Ryzex reserves the right to return product to Seller for full refund within six (6) months of date of receipt of delivery of the products.
- 5. DELIVERY SCHEDULE.** All products specified in the Order shall be delivered to the address designated by Peak-Ryzex F.O.B. Destination. Seller shall deliver to Peak-Ryzex the products in such quantities and at the time specified in the Order. Time is of the essence. Seller shall promptly notify Peak-Ryzex in writing of any anticipated difficulty in complying with the required delivery date or in meeting any other requirements of the Order. If delivery is not made at the required time, Peak-Ryzex reserves the right, at Peak-Ryzex's option to (a) cancel the Order, (b) purchase elsewhere, and/or (c) require delivery by the fastest method, whereupon Seller shall pay the premium for such transportation. Peak-Ryzex reserves the right to hold Seller liable for damages resulting from Seller's failure to meet the required delivery date. Shipments delivered more than three (3) business days prior to Peak-Ryzex's latest acknowledged requested delivery date may be returned to Seller at Seller's expense.
- 6. CHANGES.** Peak-Ryzex may at any time, by a written notice, make changes in the specification, designs or drawings, samples or other descriptions to which the articles are to conform, in the method of shipment and packaging or place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the Order, whether or not modified by any such change, an equitable adjustment shall be made in the price or delivery schedule, or both, and the Order modified in writing accordingly. Any claim by Seller for an adjustment must be made in writing within thirty (30) days of the receipt of any such notice, provided, however that Peak-Ryzex may, in its discretion, receive and act upon any such claim so made at any time prior to final payment under the Order. Nothing in this clause shall excuse the Seller from proceeding without delay to perform the Order as changed.
- 7. DEMAND FOR REASONABLE ASSURANCE.** In the event that Peak-Ryzex has reasonable grounds for insecurity with respect to Seller's performance, Peak-Ryzex may in writing demand assurance of due performance, and, until such assurance is received, Peak-Ryzex may suspend

its obligations hereunder. If Seller fails to provide such assurance with fifteen (15) days following receipt of such written demand, such failure shall constitute an anticipatory repudiation of this contract.

8. **NOTIFICATION.** Seller shall notify Peak-Ryzex of any material changes in manufacturing process, materials, plant location, our management structure in writing prior to implementation.
9. **WARRANTIES.** Seller warrants that all products and services supplied by Seller will strictly conform to the designs, specifications, drawings, samples or other descriptions furnished or adopted by Peak-Ryzex and will be merchantable, free from defect and fit for the purpose intended, and shall be clear of any and all liens for one year after delivery or such longer period prescribed by law or additional agreement. Such warranties, however, shall not be deemed to limit any express or implied warranties of additional scope given to Peak-Ryzex by Seller. All warranties, both express and implied, shall be construed as conditions as well as promises. Such warranties together with all other warranties of Seller, shall run in favor of Peak-Ryzex, its successors, assigns, customers and users. Acceptance of any products or services by Peak-Ryzex shall not be deemed to alter or affect the obligations of Seller or the rights of Peak-Ryzex, its successors, assigns, or customers, under Seller's warranties, or to waive any such rights with respect to any latent defects. The products and/or services ordered hereunder shall be manufactured and delivered in compliance with all applicable federal, state and local laws. Seller agrees to indemnify and hold harmless Peak-Ryzex, its successors, assigns and customers against and in respect of all claims, action, demands, losses, costs, expenses (including attorney's fees), liabilities and damages resulting from any breach of any of the foregoing warranties or any other warranties, express or implied.
- 10 **INFRINGEMENT INDEMNITY.** Seller agrees to indemnify and hold harmless Peak-Ryzex, its successors, assigns, agents, customers and users of the articles against loss, damage or liability, including cost and expenses (including attorney's fees) which may be incurred on account of any suit, claim, or demand involving infringement or alleged infringement of any patent, trademark, copyright or data rights the manufacture, use or disposition of any articles supplied hereunder, provided Peak-Ryzex notifies Seller of any suit instituted against it and, to the full extent of its ability to do so, permits Seller to defend the same or make settlement in respect thereof.
11. **CONFIDENTIALITY.** Seller acknowledges that Peak-Ryzex's use of the products and/or services to be provided pursuant to the Order, and Peak-Ryzex's use of Seller as a source for such items and/or services, constitutes important trade secret information of Peak-Ryzex, and Seller agrees that it will not disclose to any third party (except to the extent that disclosure to employees of Seller is necessary for the performance of the Order) the fact that Seller furnished or will furnish Peak-Ryzex with the products and/or services specified herein, unless Seller first obtains written consent thereto by an authorized representative of Peak-Ryzex. Seller agrees that all drawings, data, designs, invention, computer software, and other technical information furnished by Peak-Ryzex shall be kept in confidence and not disclosed to third parties, including but not limited to suppliers and subcontractors, without the prior written consent of Peak-Ryzex, and shall not be used in the production, manufacture or design of any article or material, except as otherwise provided herein, without Peak-Ryzex's prior written consent. This obligation shall survive the termination or expiration of this agreement. Seller shall deliver all data and information to Peak-Ryzex upon Peak-Ryzex's request in any event upon the completion of all work hereunder or the termination or expiration thereof, whichever shall first occur, and shall be fully responsible for the care and protection thereof until such delivery. Any information which Seller may disclose to Peak-Ryzex with respect to the design, manufacture, sale or use of the articles covered by the Order shall be deemed to have been disclosed as part of the consideration for the Order, and Seller shall not assert any claim against Peak-Ryzex by reason of Peak-Ryzex's use thereof. Seller agrees that all data and information (including without limitation, computer software, computer database, computer software documentation, specifications, design drawings, reports, blueprints and the like) generated in the performance of the Order and data and information which are specified to be delivered or which are in fact delivered pursuant to the Order, shall be and remain the sole property of Peak-Ryzex, and shall be deemed to be works made for hire. To the extent that any of the deliverable items may not, by operation of law, be works made for hire, Seller hereby assigns to Peak-Ryzex the ownership of copyright in the deliverable items and Peak-Ryzex shall have the right to obtain and hold in its own name copyrights, registrations and similar protection which may be available in the deliverable items. Seller agrees to give Peak-Ryzex or designees all assistance necessary to perfect such rights.
12. **BUYER'S PROPERTY.** All property used by Seller in connection with the Order which is owned, furnished, charged to or paid for by Peak-Ryzex, including, but not limited to, materials, tools, molds, patterns, fixtures, equipment, drawings and other technical information, specifications, and any replacement thereof, shall be and remain the property of Peak-Ryzex subject to removal and inspection by Peak-Ryzex at any time without cost or expense to Peak-Ryzex and Peak-Ryzex shall have free access to Seller's premises for the purpose of inspecting or removing such property. All such property shall be identified and marked as Peak-Ryzex's property, used only for the Order, and adequately insured by Seller (at its expense) for Peak-Ryzex's protection. Seller shall assume all liabilities for and maintain and repair such property and return the same to Peak-Ryzex in its original condition, reasonable wear and tear excepted, when such property is no longer required hereunder. Seller shall furnish Peak-Ryzex with a list thereof and shall comply with any Peak-Ryzex disposition instructions applicable thereto. Peak-Ryzex shall not be obligated to pay any invoices for tooling until the first article produced there from shall have been received and accepted. Materials furnished by Peak-Ryzex on other than a charge basis in connection with the Order shall be deemed to be held by Seller as bailee thereof. Seller agrees to pay Peak-Ryzex's replacement cost for all such materials spoiled or otherwise not satisfactorily accounted for. Seller agrees to supply detailed statements of inventory with respect to such property when requested by Peak-Ryzex.
13. **TERMINATION.** Peak-Ryzex may terminate work under the Order in whole or in part at any time upon giving written notice thereof to Seller. Upon such termination by Peak-Ryzex, Seller shall stop work immediately as to the terminated portion of the Order, notify subcontractors to stop work and protect any property in Seller's possession in which Peak-Ryzex has or may acquire an interest. Except where such termination is pursuant to an express right of Peak-Ryzex under this Agreement, or by default or delay of Seller, Seller may claim reimbursement on forms which Peak-Ryzex will furnish on request for (a) Seller's actual cost incurred up to and including the date of termination which are properly apportionable under recognized accounting practices to the terminated portion of the Order, including liabilities to permitted subcontractors previously billed or paid for, but excluding any charge for interest or any materials which Seller may be able to divert to other orders, and (b) reasonable profit on work actually done by Seller prior to such termination, the rate of which shall not exceed the rate used in establishing the original purchase price, the total amount of such reimbursement shall not exceed the purchase price for items covered hereby which are subject to such termination. Seller may terminate

work under the Order only if Peak-Ryzex consents thereto in writing or if such termination is a result of Peak-Ryzex's material breach of this contract. The occurrence of any contingency which might make Seller's performance under the Order impractical or impossible or the destruction of any items ordered herein, shall not relieve Seller of its obligation under the Order. If during the term of this Agreement Seller shall become bankrupt, insolvent or make an assignment for the benefit of creditors, this Agreement shall be deemed breached by Seller and Peak-Ryzex shall have the right to terminate this contract by serving written notice of termination. Such termination shall not affect any claim for damages available to Peak-Ryzex.

14. **MISCELLANEOUS.** (a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Seller shall not assign or otherwise transfer this Agreement without the prior express written consent of Peak-Ryzex. (b) Seller agrees that this Agreement exclusively governs and controls the rights of the parties so that any terms and conditions accompanying Seller's quote, invoice or other writing Seller may submit to Peak-Ryzex shall only be for Seller's convenience. Any additional or differing terms, whether or not materially different, set forth in any communication from Seller are hereby expressly rejected. (c) No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. (d) Section headings are for convenience only and do not form a part of this Agreement. (e) The invalidity or unenforceability of one or more provisions of this Agreement shall not affect the enforceability of any other provision, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted. (f) This Agreement shall be governed by the internal laws of the State of Maryland, without regard to its conflict of law provisions. The United Nations Convention for the International Sale of Goods shall not apply. (g) All notices hereunder shall be in writing, sent by certified mail, or overnight delivery service addressed to the parties at their respective addresses set forth on the Order. (h) Seller hereby grants to Peak-Ryzex, its affiliates, successors, and assigns, all rights to reference Seller and/or its logos, including quotes, photos taken or illustrations from Seller, for advertising and marketing purposes, including but not limited to case studies, print advertisements, reference in Peak-Ryzex marketing materials, press releases, Internet postings and other publications electronic or printed which are produced in the ordinary course of business.

**THE PURCHASE ORDER TERMS AND CONDITIONS ARE AN INTEGRAL PART OF THIS PURCHASE ORDER AND ARE INCORPORATED BY REFERENCE. ACCEPTANCE OF THIS PURCHASE ORDER IS ACCEPTANCE OF THE PURCHASE ORDER TERMS AND CONDITIONS. NO OTHER TERMS AND CONDITIONS SHALL APPLY.**